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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. ——

RAILROAD RETIREMENT BOARD ET AL., PETITIONERS

v.

THE ALTON RAILROAD COMPANY ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA, AND BRIEF IN SUPPORT THEREOF

PETITION

The Solicitor General prays that a writ of certiorari issue to bring before this Court the suit now pending in the United States Court of Appeals for the District of Columbia, there entitled *Railroad Retirement Board, et al.*, v. *The Alton Railroad Company, et al.*, No. 6355, which has not been submitted to, heard, or decided by that court. The suit involves the constitutionality of the Act of Congress of June 27, 1934, known as the Railroad Retirement Act, which establishes a compulsory re-

tirement and pension system, applicable to employees of interstate railroad carriers.

OPINION BELOW

The opinion of the Supreme Court of the District of Columbia (R. 261) has not yet been reported.

JURISDICTION

The final decree of the Supreme Court of the District of Columbia was entered on October 30, 1934. (R. 279.) Appeal was taken and allowed on the same day and the case was docketed in the Court of Appeals November 13, 1934. (R. 280, 283.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of June 13, 1925.

QUESTIONS PRESENTED

1. Whether the Railroad Retirement Act is unconstitutional because it applies to *all* employees of carriers subject to the Act, including employees not directly engaged in interstate transportation.

2. Whether the Act is unconstitutional because it provides for the payment of retirement annuities computed, in part, by reference to time spent in railroad service prior to the enactment of the statute.

3. Whether the provision of the Act which includes among the employees subject thereto those who were in the service of the carriers within one year prior to the enactment of the Act, is unconstitutional.

STATUTE INVOLVED

The Act of Congress of June 27, 1934, c. 868, 48 Stat. 1283, known as the Railroad Retirement Act, is set forth in full in the Appendix, *infra*, pp. 15–29.

STATEMENT

Respondents, comprising substantially all the Class I railroads of the country, the Pullman Company, and two railway express companies, filed this suit in the Supreme Court of the District of Columbia against petitioners, the Railroad Retirement Board and the three individual members of that Board, to enjoin the enforcement of the Railroad Retirement Act. The case came on to be heard upon respondent's application for a temporary injunction and, after both sides had submitted evidence in the form of affidavits, it was stipulated that the hearing be considered a final hearing. (R. 261.)

The Railroad Retirement Act sets up a retirement and pension system for all employees of carriers by railroad subject to the Interstate Commerce Act. The purposes of the Act, as stated in Section 2 (a), are to provide "adequately for the satisfactory retirement of aged employees" to promote "efficiency and safety in interstate transportation," and to make possible "greater employment opportunity and more rapid advancement of employees in the service of carriers."

The retirement and pension system established by the Act applies to all persons employed by a

carrier subject to the Act after its enactment, and also to all persons who had been employed by such a carrier within one year before the enactment of the statute. (Sec. 1 (b), *infra*, p. 16.) Retirement is made compulsory at the age of 65, but may be extended by written agreement between the carrier and employee for successive periods of one year each until the age of 70. (Sec. 4, *infra*, p. 20.) Each employee who has attained the age of 65 and who does not continue in the service of a carrier is entitled to receive an annuity calculated by the application of graduated percentages of the employee's average monthly compensation to the number of years of his service, not exceeding 30. (Sec. 3, *infra*, pp. 18–20.) Any employee who has completed 30 years of service may retire before the age of 65, but in that event the annuity is reduced by one-fifteenth for each year that the employee is below the age of 65 (unless the retirement was due to physical or mental inability to continue in active service). (*Ibid.*)

Funds necessary for the payment of annuities and for the expenses of administering the Act are to be raised by contributions from employees and carriers. (Sec. 5, *infra*, pp. 20–21.) The contribution of employees is to be a certain percentage of their compensation and the contribution of each carrier twice the contribution of its employees. (*Ibid.*) The Board may determine from time to time what percentage is necessary to provide the needed

funds, but until the Board otherwise determines the employee contribution is to be 2% of compensation. (*Ibid.*) Employee contributions are to be deducted by each carrier from the compensation of its employees and are to be paid by the carrier, together with its own contributions, into the Treasury of the United States quarterly, or at such other times as ordered by the Board. (*Ibid.*) Moneys so paid into the Treasury are to be kept in a separate "railroad retirement fund." (Sec. 8, *infra*, p. 23.)

The Board is given general authority to administer and enforce the Act, including power to require carriers and employees to furnish it necessary information and records and power to require such advance payments by carriers as may be necessary to put the Act into operation. (Sec. 9(b), *infra*, pp. 25–26.) The first quarterly payment under the Act was due November 1, 1934, and the first annuity payments thereunder are to begin February 1, 1935. (Secs. 1 (l), 3, *infra*, pp. 17, 19.)

The Supreme Court of the District of Columbia concluded that Congress has power to enact a statute "providing for the compulsory retirement at a certain age of employees of railroads engaged in interstate commerce, together with provisions for the pensioning of employees so retired." (R. 262.) But it held that the instant act exceeds the power of Congress because it applies to *all* of respondents' employees, "making no distinction between those

[employees] engaged in interstate commerce and those not so engaged." (R.263–264.) It also held that the provisions of the Act requiring payment of annuities based in part upon services rendered prior to the adoption of the Act constitute a taking of property without due process of law. (R. 264.) These provisions were held to be inseparable and incapable of elimination without destroying the entire scheme and purpose of the Act. (R. 273.) The court further held the Act invalid insofar as it applies to persons who had been employed within a year prior to its passage and who do not subsequently return to railroad service; but it held that this provision was separable and that its unconstitutionality did not impair the validity of the statute as a whole. (R. 264, 273.)

The court entered a decree declaring the Railroad Retirement Act unconstitutional and permanently enjoining petitioners from making any order or taking any other action designed to compel respondents to make any advance payment or other payment required by the Act, to compile or furnish any information or records, or to change their existing relations with any of their employees. (R. 279.) The case was docketed in the Court of Appeals for the District of Columbia within two weeks after the entry of this decree.

SPECIFICATION OF ERRORS TO BE URGED

Each of the errors assigned by petitioners (R. 280) in support of their appeal to the Court of

Appeals for the District of Columbia will be relied upon in this Court.

REASONS FOR GRANTING THE WRIT

1. The questions presented in this case are questions of constitutional law involving the validity of an Act of Congress which directly affects over 1,000,000 employees and all interstate commerce carriers by railway. It is submitted that these questions are sufficiently doubtful and of sufficient importance to warrant review by this Court, and that the public interest will be promoted by their early settlement in this Court. The trial court said that petitioners' answer to the bill of complaint raises "no serious issue of fact." (R. 261) Such disputed questions of fact as may be involved will not seriously affect the broad issues in the case and will not be difficult to resolve. All of the evidence is in the form of affidavits or statistical tables. There would therefore seem little necessity for obtaining the decision of an intermediate appellate court prior to consideration by this Court. While petitioners have assigned as error certain of the findings of fact made by the trial court, the errors so assigned primarily relate to conclusions of law embodied in the court's factual findings or to the inferences which it has drawn from non-conflicting affidavit testimony.

2. The Act provides that payment of annuities shall begin February 1, 1935. Delay in final de-

cision of the cause will postpone the payment of annuities beyond the time intended by Congress. In addition, the Board is under a duty to investigate carefully all applications for annuities in order to determine each applicant's right to an annuity under the Act and the amount of such annuity, if any is due. Even after a final decision upholding constitutionality, the necessary preliminary investigation of applications will further delay putting into effect the policies adopted by Congress. Such delay will be a particular hardship upon present employees over the age of 70, and upon those between the ages of 65 and 70 whose services are not extended by agreement, since their immediate retirement is made compulsory by the Act but the Board will be unable to direct the immediate payment of compensating annuities, as contemplated by the Act. The public is necessarily concerned when the operation of an important act of Congress is suspended by court decree. (Compare *Hurley* v. *Kincaid*, 285 U. S. 95, 104; *Dryfoos* v. *Edwards*, 284 Fed. 596, 603 (S. D. N. Y.).

3. Congress has appropriated no money for the administration of the Act other than that which is paid into the Treasury by the carriers under the Act. The final decree entered by the trial court enjoins collection of any part of the contributions required by the Act and the small advance payment made by the carriers prior to the trial, pur-

suant to an order of the Board, is being rapidly depleted. The trial court denied petitioners' application for a partial stay pending appeal which, if granted, would have allowed the Board to demand a further small advance payment from the carriers. The evident purpose of Congress in providing a six months' period between the effective date of the Act and the first payment of annuities was to allow the Board sufficient time to lay the necessary groundwork for administering the important powers vested in it. The preliminary preparations essential to effective administration, including maintenance of the Board's existing organization and personnel, are seriously interfered with as long as the constitutionality of the Act and the Board's ability to pay its employees remain uncertain.

4. Prompt determination of the constitutionality of the Act is of vital concern to many thousands of employees who, by its terms, will be entitled to annuity payments on and after February 1, 1935, and to the families of such employees. Early decision is also a matter of great importance to the more than 1,000,000 present employees of carriers subject to the Act. The carriers generally are now withholding 2% of the wages of their employees, in order to be able to satisfy the requirements of the Act should it finally be held constitutional. It is in the public interest that it be promptly deter-

mined whether the wage deductions already made should continue to be withheld and whether future wage payments should be subjected to like deductions.

Wherefore, it is respectfully submitted that this petition should be granted.

J. Crawford Biggs,
Solicitor General.

December 1934.

BRIEF IN SUPPORT OF PETITION

ARGUMENT

We have set forth (*supra*, pp. 7–10) under Reasons for Granting the Writ the grounds for our belief that the instant case presents questions of constitutional law which should be reviewed by this Court and that the public interest will unquestionably be promoted by prompt settlement in this Court of the questions involved. We shall therefore confine the brief in support of petition to a summary statement of the statutory authority, rules of court, and decided cases which support issuance of certiorari at the present stage of the proceedings.

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, 43 Stat. 938 (U. S. C., Title 28, Sec. 347), provides:

> In any case, civil or criminal, in a circuit court of appeals, *or in the Court of Appeals of the District of Columbia*, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, *either before or after a judgment or decree by such lower court*, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect,

> as if the cause had been brought there by unrestricted writ of error or appeal. (Italics ours.)

Rule 39 of the rules of this Court provides:

> Proceedings to bring up to this court on writ of certiorari *a case pending in* a circuit court of appeals or *the Court of Appeals of the District of Columbia, before judgment is given in such court,* should conform, as near as may be, to the provisions of Rule 38; and similar reasons for granting or refusing the application will be applied. *That the public interest will be promoted by prompt settlement in this court of the questions involved may constitute a sufficient reason.* (Italics ours.)

It is submitted that the following cases in which this Court has issued writs of certiorari prior to judgment in the Circuit Courts of Appeal indicate that the public interest will be promoted, within the contemplation of Rule 39, by the prompt settlement in this Court of the questions involved in the present case:

The Three Friends, 166 U. S. 1, 49, involved the construction of a statute providing for the forfeiture of any vessel fitted out and armed with the intent that it be employed to commit hostilities against the subjects, citizens and property of any State or people with whom the United States are at peace.

Forsyth v. *Hammond,* 166 U. S. 506, 514, involved review of a decision of a Circuit Court of

Appeals which was not final but which was in conflict with a decision of the Supreme Court of the State in which the case arose.

In *Pullman's Palace Car Co.* v. *Central Transportation Co.*, 171 U. S. 138, the losing party in the Circuit Court appealed both to this Court and to the Circuit Court of Appeals. Prior to decision by the Circuit Court of Appeals, this Court issued a writ of certiorari and, in deciding the case on the merits, said that it was unnecessary to determine to which court an appeal properly lay since the case was then before this Court either by appeal or by writ of certiorari.

In *White* v. *Mechanics Securities Corporation*, 269 U. S. 283, 299; *Royal Insurance Co.* v. *Fleet Corporation*, 280 U. S. 320, 325; and *Eastern Equities Corp.* v. *United States*, 282 U. S. 409, 415 (note 2), where writs were issued prior to decision in the Circuit Court of Appeals, other cases raising the same questions were before this Court either on appeal or on certiorari. The cases involved the construction of the Trading With the Enemy Act, the Suits in Admiralty Act, and the income tax law, respectively.

Piedmont & Northern Ry. Co. v. *Interstate Commerce Commission*, 286 U. S. 299, 305, involved the question of whether a particular railroad was within the phrase "interurban electric railways" used in one of the sections of the Interstate Commerce Act.

United States v. *Bankers Trust Company* (Nos. 471 and 472, October Term, 1934, certiorari granted November 5, 1934), involved the validity of the provisions of the Joint Resolution of Congress of June 5, 1933, declaring every provision in any obligation purporting to give the obligee the right to require payment in gold or in an amount in money of the United States measured thereby, to be against public policy.

See also *Degge* v. *Hitchcock*, 229 U. S. 162, 170 and *Gay* v. *Ruff*, 292 U. S. 25, 30.

CONCLUSION

It is respectfully submitted that the public interest will be promoted in the granting of this petition and the resultant prompt settlement in this Court of the questions involved.

J. CRAWFORD BIGGS,
Solicitor General.

DECEMBER 1934.

APPENDIX

The Railroad Retirement Act of June 27, 1934, c. 868, 48 Stat. 1283, provides as follows:

AN ACT

To provide a retirement system for railroad employees, to provide unemployment relief, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DEFINITIONS

SECTION 1. That as used in this Act—

(a) The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation of passengers or property or the receipt, delivery, elevation, transfer in transit, refrigeration or icing storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business

of any such "carrier": *Provided, however,* That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

(b) The term "employee" means each person in the service of a carrier, subject to its continuing authority to supervise and direct the manner of rendition of his service, who has been in such service within one year before the enactment hereof, or who after the enactment hereof shall have been in such service. The term "employee" also includes each officer or other official representative of an "employee organization" herein called "representative", who has performed service for a carrier, who is duly designated and authorized to represent employees under and in accordance with the Railway Labor Act, and who, during, or following employment by a carrier, is engaged in such representative service in behalf of such employees.

(c) The term "Board" means the Railroad Retirement Board hereby created.

(d) The term "annuity" means regular payments at the end of each completed month during retirement, ceasing at death or at resumption of compensated service.

(e) The term "service" means the employment relation between an employee and a carrier whether before or after the enactment hereof.

(f) The term "service period" means the total service of an employee for one or more carriers whether or not continuously performed, and includes as one month every calendar month during which the employee has been paid compensation by a carrier and includes as one year every twelve such months. An ultimate fraction of six months or more shall be computed as one year.

(g) The term "retirement" means the status of cessation of compensated service with the right to receive an annuity.

(h) The term "age" means age at the latest attained birthday.

(i) The term "carrier contribution" means the payment to be made by each carrier.

(j) The term "employee contribution" means the payment to be made by each employee.

(k) The term "voluntary contribution" means the payment made by an employee equal to the total of both the employee and the carrier contribution.

(l) The term "effective date" means the 1st day of the second month after the taking effect of this Act.

(m) The term "Railroad Retirement Act" means and may be used in citing this Act and subsequent amendments thereto.

Purposes

Sec. 2. (a) For the purpose of providing adequately for the satisfactory retirement of aged employees and promoting efficiency and safety in

interstate transportation, and to make possible greater employment opportunity and more rapid advancement of employees in the service of carriers, there is hereby established a railroad retirement system; and it is made the duty of all carriers and employees subject to this Act to perform and fulfill the obligations imposed thereby. This Act shall be administered and construed with the intent and to the purpose of providing the greatest practicable amount of relief from unemployment and the greatest possible use of resources available for said purpose and for the payment of annuities for the relief of superannuated employees.

SPECIAL REPORT

(b) Not later than four years from the effective date, the Board, in a special report to the President of the United States to be submitted to Congress, shall make specific recommendations for such changes in the retirement system hereby created as shall assure the adequacy and permanency of said retirement system on the basis of its experience and all information and experience then available. For this purpose the Board shall from time to time make such investigations and actuarial studies as shall provide the fullest information practicable for such report and recommendations.

ANNUITIES

S. . 3. Each employee having attained the age of sixty-five years, or having completed a service period of thirty years, shall be paid an annuity, to begin on a date specified in a written application,

which date shall not be more than sixty days before the making of the application. No annuity shall begin less than six months after the effective date. Such annuity shall be based upon the service period of the employee and shall be the sum of the amounts determined by multiplying the number of years of service, not exceeding thirty years, by the following percentages of the monthly compensation: 2 per centum of the first $50; 1½ per centum of the next $100; and 1 per centum of the compensation in excess of $150. The "monthly compensation" shall be the average of the monthly compensation paid to the employee by the carrier, except that where applicable for service before the effective date the monthly compensation shall be the average of the monthly compensation for all pay-roll periods for which the employee has received compensation from any carrier out of eight consecutive calendar years of such services ending December 31, 1931. No part of any monthly compensation in excess of $300 shall be recognized in determining any annuity for any employee contribution. The annuity shall be reduced by one-fifteenth of such annuity for each year the employee is less than sixty-five years of age at the time of the first annuity payment. No such reduction shall be made if the Board shall determine that the carrier has retired the employee because of physical or mental inability to continue in active service. Upon death of an employee before or after retirement an amount, equal at his death to a computation, with interest at 3 per centum compounded annually, of the accumulation from his payments less any annuity payments received by him, shall

be paid as he may have designated or to his legal representative. Any employee who upon retirement shall be entitled to an annuity with a value determined by the Board of less than $300 shall be paid such value in a lump sum.

RETIREMENT

SEC. 4. Retirement shall be compulsory upon employees who, on the effective date, have attained or thereafter shall attain the age of sixty-five years. The carrier and the employee may, by an agreement in writing filed with the Board, extend the time for retirement as to such employee for one year and for successive periods of one year each, but not beyond the age of seventy years. Until five years from the effective date, the compulsory retirement shall not apply to an employee who from and after the effective date occupies an official position in the service of a carrier.

CONTRIBUTION

SEC. 5. Each employee shall pay an employee contribution in a percentage upon his compensation. Each carrier shall pay a carrier contribution equal to twice the contributions of each employee of such carrier. The employee compensation shall be the compensation for service paid to such employee by the carrier excluding compensation in excess of $300 per month. The contribution percentage shall be determined by the Board from time to time, and shall be such as to produce from the combined employee and carrier contributions, with a reasonable margin for contingencies, the amount necessary to pay the annuities, other disburse-

ments and the expenses becoming payable from time to time. Until the Board shall determine on a different percentage the employee contribution percentage shall be 2 per centum. Employee contributions shall be deducted by the carrier from the compensation of its employees and shall be paid by the carrier, together with the carrier contributions, into the Treasury of the United States quarterly or at such other times as ordered by the Board.

EXISTING PENSION SYSTEMS

SEC. 6. The Board shall have the power to provide by appropriate rules and regulations for substituting the provisions for annuities and other benefits to employees under this Act, for any obligation for prior service or for any existing provisions for the voluntary payment of pensions to employees subject to this Act by a carrier or any employees subject to this Act, so as to relieve such carrier from its obligations for age retirement benefits under its existing pension systems and to transfer such obligations to the retirement system herein established. If the fulfillment of any such transferred obligation shall require additional contributions or larger payments than would otherwise be required under the provisions of this Act, then such additional contributions shall be made by the carrier originally responsible for the creation of such obligation or for the excess amount of such payments over those which would be required under the provisions of this Act. In the event that the Board is unable to make satisfactory arrangements with any carrier for the substitution of the

provisions under this Act for its existing pension system, then, and in that event, the provisions of this Act shall be applied to said carrier and its employees without regard to any conflict or duplication in the operation of such an existing pension system and the operation and effect of the provisions of this Act: Provided, That the Board, at its option, shall have power, in lieu of the foregoing provisions of this section, to order that all former employees of carriers, who prior to the effective date have become separated from the service at the age of seventy years or over and who may or may not be receiving age retirement benefits, shall be entitled to the benefits of this Act.

EMPLOYEE REPRESENTATIVES

SEC. 7. Any representative of an employee organization who is included within the definition of "employee" in paragraph (b), section 1, of this Act shall have the option, but, shall not be required to continue or to become a beneficiary under the provisions of this Act. If he shall elect to continue or to become such a beneficiary he shall pay all voluntary contributions.

For the purposes of this section the requirements of section 4 of this Act shall not apply. Service rendered to an employee organization shall be included in computing the total service period of such representative.

For such representative who shall elect to become a beneficiary under this Act, the basic compensation upon which contributions shall be made and benefits calculated shall be that compensation paid by the carrier for service rendered in the

position to which the rights of such representative would entitle him for the period defined in section 3 of this Act: *Provided,* That if no definite and specific rights obtain, the average compensation paid to the four employees whose last date of entry in the service is nearest the date of entry in the service of the same carrier by such representative, shall be his basic compensation to be determined for the period defined in section 3 of this Act. When a question arises as to rights under this provision the Board shall investigate and determine rights of such representative.

For such representative who elects to continue as a beneficiary under the provisions of this Act, his basic compensation shall be the average monthly compensation paid to him by the carrier during the last twelve months of active service with such carrier.

RETIREMENT FUND.

SEC. 8. All moneys paid into the Treasury under the provisions of this Act, all interest, and other receipts, and all refunds of moneys paid out under this Act shall constitute and be kept in a separate fund in the Treasury to be known as the "railroad retirement fund." At the request and direction of the Board, the Treasurer of the United States, with the approval of the Secretary of the Treasury, is authorized to invest such funds as are not immediately required for disbursements in interest-bearing bonds, notes, or other obligations of the United States, and to collect the principal and interest of such securities and to sell and dispose of the same as in the judgment of the Board shall be in the interest of said fund. There is hereby

appropriated such sums not in excess of the amounts in said fund as may be necessary to pay all annuities, other disbursements and the expenses of administration of this Act.

RETIREMENT BOARD

SEC. 9. (a) PERSONNEL.—There is hereby established as an independent agency in the executive branch of the Government a Railroad Retirement Board, to be composed of three members appointed by the President, by and with the advice and consent of the Senate. Each member shall hold office for a term of five years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of the term and the terms of office of the members first taking office after the date of enactment of this Act shall expire, as designated by the President, one at the end of two years, one at the end of three years, and one at the end of four years, after the date of enactment of this Act. One member shall be appointed from recommendations made by representatives of the employees and one member shall be appointed from recommendations made by representatives of the carriers, in both cases as the President shall direct, so as to provide representation on the Board satisfactory to the largest number, respectively, of employees and carriers concerned. One member, who shall be the chairman of the Board, shall be appointed initially, for a term of two years, without recommendation by either carriers or employees and shall not be in the employment of or be pecuniarily or other-

wise interested in any carrier or organization of employees. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board of whom a majority of those in office shall constitute a quorum for the transaction of business. Each of said members shall receive a salary of $10,000 per year, together with necessary traveling expenses and subsistence expenses, or per diem allowance in lieu thereof, while away from the principal office of the Board on duties required by this Act. The members and employees of the Board shall be included as employees under this Act and together with employees receiving annuities shall be furnished free transportation in the same manner as such transportation is furnished to employees.

(b) DUTIES.—The Board shall have and exercise all the duties and powers necessary to administer this Act. The Board shall receive and take such steps and institute and prosecute such proceedings and actions as may be necessary to enforce the payments and obligations required under the Act, make and certify awards and payments, and account for all moneys and funds necessary thereto. The Board may require such advances upon the payments of carriers as necessary to put this Act into operation. The Board shall establish and promulgate rules and regulations and provide for the adjustment of all controversial matters, with power as a Board or through any member or subordinate designated therefor, to require and compel the attendance of witnesses, administer oaths, take testimony, and make all necessary investigations in any matter involving annuities or other

payments, and shall maintain such offices, provide such equipment, furnishings, supplies, services, and facilities and employ such persons and provide for their compensation and expenses, as may be necessary to the proper discharge of its functions. All rules, regulations, or decisions of the Board shall require the approval of at least two members and shall be entered upon the records of the Board and shall be a public record. The Board shall gather, keep, compile, and publish in convenient form such records and data as may be necessary, and at intervals of not more than two years shall cause to be made actuarial surveys and analyses, to determine from time to time the payments to be required to provide for all annuities, other disbursements and expenses, and to assure proper administration and the adequacy and permanency of the retirement system hereby established. The Board shall have power to require all carriers and employees and any officer, board, commission, or other agency of the United States to furnish such information and records as shall be necessary for the administration of this Act. The Board shall make an annual report to the President of the United States to be submitted to Congress. Witnesses summoned before the Board shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

COURT JURISDICTION

SEC. 10. The several district courts of the United States and the Supreme Court of the District of Columbia shall have jurisdiction to entertain an

application and to grant appropriate relief in the following cases which may arise under the provisions of this Act:

(a) An application by the Board to compel an employee or other person residing within the jurisdiction of said court, or a carrier subject to service of process within said jurisdiction, to comply with any obligations imposed on said employee, other person, or carrier under the provisions of this Act.

(b) An application by an employee or carrier to the Supreme Court of the District of Columbia or to the district court of any district wherein the Board maintains an office or has designated an agent authorized to accept service in its behalf, to compel the Board to set aside an action or decision claimed to be in violation of a legally enforceable right of the applicant, or to take an action, or to make a decision necessary for the enforcement of a legal right of the applicant, when the applicant shall establish his right to a judicial review upon the jurisdictional ground that, unless he is granted a judicial review of the action or decision, or failure of the Board to act or to decide, of which he complains, he will be deprived of a constitutional right to obtain a judicial determination of his alleged right.

(c) The jurisdiction herein specifically conferred upon the said Federal courts shall not be held exclusive of any jurisdiction otherwise possessed by said courts to entertain actions at law or suits in equity in aid of the enforcement of rights or obligations arising under the provisions of this Act.

EXEMPTION

SEC. 11. No annuity or death payment shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever.

PENALTY—CARRIER

SEC. 12. On the failure of any carrier to make any payment when due under the provisions of this Act, such carrier, unless excused by order of the Board, shall pay an additional 1 per centum of the amount of such payment for each month such payment is delayed.

OTHERS

SEC. 13. Any employee, other person, officer, or agent of a carrier subject to this Act who shall willfully fail or refuse to make any report or furnish any information required by the Board in the administration of this Act or who shall willfully fail or refuse to make any accounting required under this Act, or who shall knowingly make any false or fraudulent statement or report required for the purpose of this Act, or who shall knowingly make or aid in making any false or fraudulent statement or claim for the purpose of receiving any award or payment under this Act shall be punished by a fine of not less than $100 nor more than $10,000 or by imprisonment not exceeding one year.

SEPARABILITY

SEC. 14. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act or application of such provision to other persons or circumstances shall not be affected thereby.

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